7/02 Exam - MO Essay 1 - Sample Answer #1

Question 1:
Part 1: Generally, in Missouri, review is based on whether the particular dispute constitutes a contested case. A contested case exists if (1) a statutory/regulatory right to a hearing exists and (2) it is to be adversarial in nature. Here, the hearing in front of the Commission was initiated pursuant to commission rules, thus the first requirement is satisfied. Moreover both witnesses testified adverse to one another and the commission found the facts and interpreted the law. Thus, this constituted a contested case.

Chance should seek review by filing a petition for administrative review in the circuit court. MAPA (MO Admin. Procedure Act) provides the authority for such review.

Part 2: Generally, in a "contested case," the reviewing court review decisions of law de novo. Practically no discretion is given to the agency in constructing and interpreting statutes. Thus, the reviewing court will review the Commission's findings re: the interpretation of "misconduct" de novo and essentially re-decide the law.

However, factual issues are reviewed in contested cases under a "substantial evidence on the record" standard. To do so, the court will ensure that enough evidence for a jury to find the appropriate facts (similar to summary judgment std.) existed when the agency decided the case. (No jury involved, but the test is very similar).

Part 3: This would constitute a mixed question of law and fact. The court would attempt to separate out the "pure law" and the "pure facts." Once doing so, it will review the pure law de novo (eg. what the Gaming Statute requires for misconduct). It will use "substantial evidence on the record" standard to review the facts (eg. whether Alvin's conduct violated the "misconduct" std.)

Part 4: Assuming that the agency followed appropriate MO notice and comment rulemaking procedure (i.e notice & comment/30 days in MO register for comments & final rule published for 30 days before taking effect), it would not matter whether Alvin actually "knew" of the statute. As an advanced participant in the gaming industry, his failure was his fault, he should've checked to MO Register.

Part 5: The court of appeals should dismiss Alvin's due process claim. Generally, a claim must be raised in the circuit court to preserve it for the court of appeals to review. Moreover, in MO, constitutional claims must be made at the first opportunity. Here, that would have been at trial. This would have allowed the taking of evidence and the creation of a record for the appellate court to review.

Part 6: Stickler failed to exhaust his administrative remedies, which is required. Moreover, generally a circuit court with jurisdiction that overlaps with an agency will abstain and allow the agency to decide the case. Of course, Stickler could always seek review of the decision in circuit court once he has a final decision from the agency and a record for the circuit court to review.

7/02 Exam - MO Essay 1 - Sample Answer #2

1. Most administrative decisions rendered by Agencies as that term is defined by the Missouri Administrative Procedures Act (an entity with an administrative purpose that is entitled to hear contested cases or procedure rules) ("MAPA") are subject to judicial review even in the absence of such a provision in the agencies enabling legislation. The case (hearing) decided in this fact pattern clearly qualifies as a "contested case" under MAPA because it was required (either by Commission rules as was the case here, statute or constitutional due process) and it is adversarial in nature. The hearing effects Chance's rights not an open class of people. Thus this contested case should be appealable to a Circuit Court in Missouri. The Administrative Hearing Commission, a neutral body that reviews some agency hearings is another avenue for review but it does not apply to gaming commission decisions. Thus filing a case in the circuit court for review of the contested case is appropriate. Additionally, because constitutional due process rights are implicated, this is another grounds to have the agencies decision reviewed by a court. A governmental entity (the commission) was involved, the action was individualized (it effected Chance only) and arguably deprived him of a liberty or property interest (money is property and Chance was fired). The levying of a fine by an agency is usually reviewable by Missouri Courts because it is a deprivation of a traditional indicice of wealth (i.e. property/money).

2. When a court reviews an agencies Legal decisions (as in the legal requirements for "misconduct" under the gaming statute) they use a de novo standard of review. Missouri courts do not usually follow the Chevron case but instead review findings of law de novo. In this case the commission is interpreting its statutes definition of the term misconduct. The court might give some deference to this decision, but if it is viewed as legal it will use de novo review.

For factual findings a court use the substantial evidence standard of review. This is similar to that of a directed verdict and as long as a reasonable fact finder could have reached the decision based on the evidence it will be upheld by the reviewing court.

3. Final determinations by agency decisions are usually reviewed using the arbitrary and capricious standard of review. This deferential standard of review is somewhat similar to the substantial evidence standard but it is more deferential. As long as the Commission decision is based on some evidence and is rational and it is not found that like situations are being treated differently it will usually be upheld by a reviewing court.

4. Chance's argument that he was not aware of a commission rule is probably a weak one. Ignorance of a rule is not usually a strong argument. If the commission was required to follow MAPA in its rule making procedures and it abided by the Notice and Comment informal rule making process therein, then Chance's argument is doomed to fail. If Chance can show that these procedures were not followed (and the Commission was a state agency that had to follow them under MAPA) he might have more success on this argument. In this case, the facts are unclear as to why Chance did not know. Agencies are usually given much deference to decide whether to issue rules or use adjudication ("contested cases") to promulgate policy.

5. Usually a constitutional argument such as this is not raised for the first time on appeal and

thus I don't think that the Appellate Court would have to reach the merits on this argument because it was not preserved for appeal in the trial court. However, if they did, a constitutional due process argument regarding rule making is not usually successful. Goldless v. Kelly and the Matthews balancing test for constitutional due process rights are usually implicated when a due process right relating to a hearing (or contested case) is denied. In this argument he would be arguing that the commission violates his due process rights for being vague. Agencies have wide latitude to interpret their statutes by adjudicatory hearings (vice rule making) and absence a showing of abuse of that process, treating similar cases differently, or direct reliance on earlier rulings a constitutional challenge will probably not be successful on these grounds and based on the facts on this case.

6. They could argue that Chance has not used all of the administrative procedures available to him first and thus the case is not ripe for judicial review. Before appealing to a court administrative remedies must be exhausted and in this case, Stickler doesn't appear to have exhausted his administrative remedies. A constitutional or legal argument is not involved, so Stickler should appeal to the agency head of the Gaming Commission before seeking judicial review.

7/02 Exam - MO Essay 1 - Sample Answer #3

1. This was a contested case before the MGC. To seek judicial review, Chance must first exhaust all administrative remedies and then he can file suit in Circuit Court. Chance may seek review on Constitutional, Jurisdictional, Procedural grounds and on the merits. The authority by which he can seek review is the MOAPA and/or the Enabling Act of the MGC.

2. For the "misconduct" determination, the court should apply de novo review—substituted judgment. The term "misconduct" is defined by statute, and the court's are the ultimate interpreters of statutory law. The court should apply the substantial evidence standard to the findings of fact. This standard of review is whether the decision is reasonable in light of the record as a whole.

3. The final determination is a decision on the merits. Since this was a contested case, the court will apply a substantial evidence standard to the findings of fact and an abuse of discretion standard for any discretionary or disciplinary decisions handed down by the MGC. The abuse of discretion standard will determine whether or not the MGC considered any irrelevant facts, failed to consider any relevant facts, the decision is unreasonable, or if there are any unexplained inconsistencies.

4. Ignorance of the regulation/law is generally no excuse. The court will look to the jurisdiction of the MGC in the statute/Enabling Act, to see if the MGC has jurisdiction over the non-gaming areas of the casino. Assuming that the MGC doe have jurisdiction and a law covering prior approval, Chance will not succeed in this argument.

5. On appeal, the appellate court will review the record of the administrative hearing. Chance must raise issues and objections in the admin. hearing in order to preserve them for appeal. Since he failed to do so, the Court should dismiss this point on appeal.

6. Stickler must first exhaust all administrative remedies before filing suit in circuit court. The Commission should move to dismiss his petition on this ground. Stickler will be compelled, after dismissal, to petition the MGC or Admin. Hearing Commission for a hearing regarding his fine. Only after exhausting these administrative remedies can he file in circuit court for a review of those decisions.

7/02 Exam - MO Essay 2 - Sample Answer # 1

1. Joe is likely liable to specifically perform the contract.

Specific performance requires: 1. No adequate remedy at law, 2. certainty, 3. No practicability concerns such as foisting and excessive judicial supervision, 4. Unique subject matter.

In Missouri, a real estate vendor is generally entitled to specific performance because even though he contracted for the payment of money, under the doctrine of "affirmative mutuality of remedies," the vendor gets the same relief that the vendee could get, that is, specific performance of a contract to convey land, which is per se unique.

There are no practicability concerns here, and we have already established that the res is unique and there is no adequate remedy at law. The remaining issue is certainty. Equity requires more specificity than a regular contract before specific performance will be awarded/granted. Here, there was a fill in the blanks contract which contained a description of the home, a price , and a closing date. The understanding concerning Joe's "trade" contingency was not embodied in the contract. Further, more specificity would have been desired as to warranties, title, deeds, financing, etc. However, the subject parcel was identified, with a price, and a date was set for sale. This is likely certain enough to enable specific performance.

Hence, since Mike is a vendee entitled to specific performance of a real estate contract and the contract is certain enough to enable equitable relief, Joe will be required to specifically perform unless he can establish an equitable defense (none are indicated in the facts) or succeeds in reforming the contract.

2. The issue is whether Joe will be able to reform the contract on the basis of a mutual mistake.

Reformation is an equitable remedy whereby a court will "reform" or alter a contract to comport with the actual intent of the parties. It is available where a mutual mistake has occurred.

A mutual mistake occurs where the parties attach different meaning to a term or fail to embody terms of agreement in the contract, without fault of either party.

Here, Mike filled out a form contract that Joe adhered to. The fill in the blank form provides some evidence that the agreement did not embody their intent. This conclusion is bolstered by the relatively clear evidence of a trade contingency.

Hence, Reformation may be available to Joe (he will have to present adequate evidence, the Parol Ev. Rule is inapplicable because this goes to the fact of contracting).

7/02 Exam - MO Essay 2 - Sample Answer #2

1) Generally, to obtain specific performance, six elements are required. The plaintiffs remedy at law must be inadequate, equitable relief must be feasible and practicable, there must be no defenses thereto, there must have been a valid contract, all conditions thereto must have been performed and there must exist mutuality of remedy. Here, Mike will likely prevail on a specific performance claim. Mike's remedy at law is inadequate because the sale of land is involved. Land is always considered unique. Additionally, equitable relief is both feasible and practicable, as both parties are in the jurisdiction; and performance would be mandatory (yet very simple) as no installments or complex activity is involved. In this case, there are no defenses available to Joe - there was no material misrepresentation, no fraud, and no mistake. There was a valid contract, from all outward appearances. As to conditions to the contract, Joe & Mike do have a legitimate dispute, however, that dispute cannot nullify the contract. Conditions alleged to have arisen prior to or contemporaneously with a written agreement intended to be the final agreement between the parties are not given effect and cannot be proved by extrinsic evidence, due to the parol evidence rule. Therefore, Joe & Mike's signed contract is presumed to have been the final, complete agreement of the parties. The contract made no mention of the condition, and parol evidence cannot be used to prove its existence. Thus, there were no conditions to be performed under Joe & Mikes contract. Lastly, there must be mutuality of remedies for specific performance to be properly granted. Here, both parties could compel the other to perform (no defenses thereto), and mutuality exists.

On the facts, it is likely that Mike could prevail on a request for specific performance.

2) Generally, a contract may be reformed if it does not reflect the parties' true agreement. In order to grant reformation, the court must find mistake, mutual or unilateral (under limited circumstances). Here, there was meeting of the minds at the time of the contract. Joe believed he was free to purchase the home "if he was traded," and Mike knew Joe's beliefs. The condition was omitted from the contract not because Mike believed there would be no condition, but because he didn't want one to appear in the contract, and because he was awed by Joe's fame. Mike cannot now say that no condition existed and there was no meeting of the minds. Reformation may or may not be proper here. If the court finds that Joe believed, as an unsophisticated buyer, that the agreement contained a condition, reformation is proper. If, however, the court finds that Joe & Mike were clear at the time of contracting about what each was getting under the contract and neither knew that conditions not in written form are invalid, reformation is also proper. Therefore, Joe's request for reformation should be granted.

7/02 Exam - MO Essay 2 - Sample Answer #3

1) To obtain specific performance of a RE K there must be 1) a valid contract, 2) all conditions precedent must be met 3) damages must be inadeq 4) enforcement must be feasible 5) mutuality of remedy 6) no defenses available

Here there is a valid signed K to purchase/sell Mike's home. According to the terms of the written K, there are no conditions/contingencies & therefore that requirement is met. In RE K, action for land, damages are presumed to be inadequate, therefore that requirement is met. Enforcement must be feasible. This would entail things such as jurisdictions of the parties & how involved the Ct must be in enforcing the obligation. Here the Ct has jurisdiction over the property & the parties (defendant made a K in MO & therefore comes w/i Long Arm Statute) There must also be mutuality of obligations & remedies. This means that the buyer could have also sued for specific performance. Historically that was not the case. Today however it is accepted that a purchaser can sue for spec perf of a RE K. Finally there must be no defenses (laches, unclean hands, hardship).

Laches doesn't apply b/c there is no time delay. Mike has engaged in no misconduct in this transaction that would make the unclean hands doctrine come into play. And the hardship defense is not valid. The parties contracted & got what they contracted for (maybe not however, see Quest. #2)

Without addressing the reformation claim, Mike stands a pretty good chance of getting Spec Perf of the RE K.

2) Reformation occurs when the parties have a valid K, but for some reason (mistake, oversight) the written K does not conform to the party's intentions.

A unilateral mistake usually won't suffice. A mutual mistake would normally be grounds for recession as well.

Here, we have a valid RE K to sell Mike's home. It contains no conditions or contingencies. However Joe did not want to go through w/ the K unless he was traded. His intention was to make the sale conditioned on him being traded. But that is not enough, we must look at Mike's intention.

From the facts, initially Mike wanted <u>no</u> contingencies for the sale of his house. However, he wanted to sell the house to a star like Joe, & apparently impliedly, agreed to the contingency. It appears Mike's intention was to also make the sale conditioned on Joe being traded. He felt it was certain to occur & believed that the condition would be satisfied.

You could also argue this is a mutual mistake as to whether Joe would be traded. This is not a good argument however b/c they made that a contingency, they knew it was possible for him to not be traded.

Because there was a valid written K that failed to reflect the true intention of the parties, reformation is applicable. The K should be reformed & Joe should not be forced to purchase the property.

The parol evidence rule (bars admission of evidence of prior/contemporaneous oral evidence that contradicts terms of written K) would not bar this testimony b/c Joe is not trying to contradict a term of the K, he is trying to show there is a condition that has not occurred.

7/02 Exam - MO Essay 3 - Sample Answer #1

1. No.

2. In this case, John and Sue were not required to supplement the responses to the interrogatories. This is b/c of the way the interrogatories are drafted. The interrogatories clearly ask for "written or recorded statements" of any person "conceming the occurrences set forth in your Petition." In this case, the filming of D'Bugg inspecting a neighbors house has nothing to do w/the House's lawsuit.

In 19, the interrogatory reads the same way–"personal knowledge of facts set forth in your petition." The neighbors have no facts concerning the House's lawsuit. Normally, the scope of discovery is anything that is reasonably calculated to lead to admissible evidence. Therefore, the fact that this videotape may be inadmissible is irrelevant for discovery purposes. The reason why House's don't have a reason to supplement is b/c the interrogatories are so narrowly drawn.

3.A party has an obligation to supplement interrogatories if they ask for:

1. Names of witnesses or
2. Names of experts or
3. The answer to the interrogatory was wrong or
4. To answer to the interrogatory becomes wrong.

In this instance, #18 needs to be

4. Yes

5. On appeal, the court of appeals will look at this decision under an abuse of discretion std meaning that it will not be overturned unless it is clearly against the logic of the circumstance, it is so arbitrary and capricious that it shocks the ordinary sense of justice and it suggests the judge did not consider the issue fully.

In this instance, the judge, if she decides sanctions to be warranted, might be able to dismiss the case. However, this infraction is of the type that is so trivial that it does not warrant dismissing the whole case. This case just involved a situation where the may not have gotten some irrelevant evidence in the videotape and the neighbor's testimony. If a bigger violation would have occurred, maybe dismissal was warranted, but not in this case. Additionally, it is unclear whether the D'Buggs attorney followed proper procedure in filing for sanctions. It is not clear whether he sent the request for withdrawal, followed by the motion, then waiting 30 days to allow the other side to comply, and then if they hadn't to file the motion for sanctions. If the attorney did not do this, the sanction was improper.

7/02 Exam - MO Essay 3 - Sample Answer #2

1. NO

2. Although Federal Civil procedure imposes a general obligation to supplement discover responses, Missouri civil procedure generally imposes no such obligation. While there are exceptions and in some cases Missouri will impose a duty to supplement the exceptions do not appear to apply here. Finally the House's can agree that this videotape (of the defendant doing a termite inspection of the house of a neighbor does not fit within the scope of the two questions, there is no evidence that any person made statements on the tape concerning the occurrences set forth in the petition. Nor is there any evidence that the neighbor had personal knowledge of the facts set forth in the petition. Thus Joe and Sue were in no obligation to supplement their responses to their interrogatories and even if there was an obligation to generally supplement then the tape likely falls outside the scope of the initial interrogatories.

3. A party must supplement interrogatories concerning the identity of expert witnesses that will be called to testify. The identity of other witnesses that the party intends to call. Also a party must supplement answers to interrogatories concerning exhibits that the party intends to use at trial.

4. Yes

5. Assuming that there was a duty to supplement the interrogatory Judge Clair D Docket probably abused her discretion by dismissing John and Sue's lawsuit in this. Generally trial judges have broad discretion to regulate the parties conduct in the discovery process. This discretion includes the ability to issue sanctions. However the purpose of the discovery sanction is to defer further wrongful conduct in discovery and the sanction should not be disproportionate to the violation or unreasonably burdensome on a party. While a judge does have the power to dismiss a lawsuit for discovery violations this is only appropriate for very serious violations of the discovery process and generally only seen where there has been a pattern of abuse of the process. Here there is no evidence of continual discovery violations on the part of John and Sue and the violation (assuming that failure to supplement was a violation) is likely very minor. It is not clear whether John and Sue intend to introduce the tape at trial or that the tape would be even admissible. There is no evidence of an intent to hide the tape from DBugg, the filming was conducted 2 years after the interrogatories were answered and DBugg knew of the existence of the tape because he was present when it was filmed. This appears to be a very minor violation and the dismissal of the case after over 2 years of litigation this close to the trial is an excessive sanction and was an abuse of Judge Docket's broad discretion to regulate discovery.

7/02 Exam - MO Essay 3 - Sample Answer #3

1. No.

2. Like the federal rules, Missouri does have the requirement to supplement interrogatories, however, such requirement is not expansive as the federal rules. In Missouri, party's must supplement interrogatory responses within a reasonable time where (1) the opponent asks for identity of experts, (2) the identity of witnesses, (3) any question which was true when answered but later becomes false, and (4) any answer which was false when made.

In this case, question 18 asked the partys if they had access to a recorded statement concerning OCCURRENCES SET FORTH IN YOUR PETITION. Here, the videotape had nothing to do with occurrences set forth in plaintiffs petition. Rather, it was simply a videotape of the defendant doing work on another persons home.

Although a party must supplement the interrogatories that are true when made, but later become false, this is not such a situation because of the specific wording of the interrogatory.

Further, nothing in the facts suggest that anyone else has information regarding the occurrence. Thus, although a party has a duty to supplement the identity of witnesses, nothing suggests any witnesses need be identified.

The plaintiffs have nothing to supplement under these facts.

3. As stated, parties must supplement answers to interrogatories when (1) to show the identity of witnesses, (2) the identity of experts, (3) when statements were false when made, or (4) when statements were true when made, but later become false.

4. Yes

5. The general rule is that the judge is the final arbiter for discovery and alleged discovery violations. When a judge makes such decisions, her decision is reviewed on an abuse of discretion standard of review.

In determining whether a judge abused her discretion, the court will look to whether the judges determination is against all logic in the record and was arbitrary and capricious.

In this case, there was no significant hardship to the defendant in this case because first of all, as described above, there was no duty to supplement the interrogatory. Further, even if there was a requirement to do so, the defendant would not have been prejudiced in this case because there was a full 6 months before trial was set. Therefore, the judge could have simply ordered plaintiffs to turn over the materials which were discoverable.

The counter-argument is that this was simply a dismissal without prejudice, because the judge did not specifically state that it was with prejudice.

Nevertheless, because the interrogs need not have been supplemented and the defendant was not subject to prejudice because the trial was still six months away, even though the judge has discretion to decide discovery abuses, this was likely an abuse of discretion.

7/02 Exam - MO Essay 4 - Sample Answer #1

1. The issue involves the requirements for a trust & whether a charitable trust will survive a lack of beneficiary.

Generally, a valid trust must have:

1. capacity
2. intent to create a trust/establish fiduciary duty
3. formality (declaration/transfer)
4. Res.
5. Ascertainable Beneficiaries
6. Lawful Purpose

The requirement of ascertainable beneficiaries is b/c there must be someone eligible to enforce that trust & to ensure that the trustee is upholding his fiduciary duties.

However, in charitable trusts, the req't for an ascertainable beneficiary is relaxed somewhat b/c the trust is for the public good & enforceable by the Atty General.

Further, under the doctrine of Cy Pres. the ct. will determine whether the Settlor intended the trust to benefit only a specific charity or organization or whether the Settlor had a "generic" charitable purpose (i.e., to benefit society). If the ct. finds that Settlor had a specific purpose, then the trust will fail. However, it the ct. finds a general charitable purpose, the ct. will reform the trust to provide as such & continue the trust. The trend among cts. is in favor of continuing charitable trusts when possible.

Here, the issue becomes: Did Alumni intend this specifically or generally. From the facts, it appears that Alumni intended a general charitable purpose for the benefit of disadvantaged law students.

The facts state that he (obviously) was an alumni of the Law School & had been a generous benefactor. Thus it appears he was seeking to give only to his school. However, the "purpose" of the trust was to provide scholarships to economically disadvantaged law students–a general charitable purpose.

Thus, under the trend of cts to find a general charitable purpose, the ct. would most likely reform the K to provide scholarships for such law students at another school–though not necessarily for paralegals.

Had the ct. not have Applied Cy Pres, the trust would have failed.

The principal would have gone back to Settlor by resulting trust. The principal would have been distributed through the residuary of Alumni's will if possible or to his heirs by intestate succession.

2. Yes, Lori's trust may be modified/terminated. Issue: What is req'd for trust termination/modification?

The rule in MO is that a trust can be modified (even as to a material purpose) /terminated if:

1) all competent, adult beneficiaries agree, &
2) the ct. determines that modification/termination is in the best interests of all minor, incompetent, & unascertainable contingent beneficiaries.

Here, we have a situation that calls for such a determination by the court. Tabitha's child is 23, & thus a competent, adult contingent beneficiary. However, Tom's child is only 3. Further, because both Tom & Tabitha are alive, the class of their children has not closed. Thus, there remains other possible contingent beneficiaries that are unascertainable.

Here, b/c of the drought, etc. & b/c the parents of the contingent beneficiaries will presumably use the principal for the benefit of their children, it is likely that ct. will terminate the trust so long as Tabitha, Tom, & Tabitha's Child (age 23) all agree.

It should also be noted that the term "issue"–if not defined in the trust instrument–will be given its meaning under Missouri intestacy laws. As such "issue" refers to all descendants of Tabitha & Tom. Thus, in determining benefit to contingent beneficiaries, the ct. must take this definition into account.

Further, if it is construed that by using the term "issue" that Lori intended that the Farmland stay in the family in perpetuity–it could be determined that such a req't is a restraint on alienability & possibly a violation on the Rule Against Perpetuities (although that rule has changed in MO recently).

7/02 Exam - MO Essay 4 - Sample Answer #2

1. The Board of Regents of B.C.P.K. will get the trust principal if the reviewing court decides to invoke the Cy Pres doctrine. The Cy Pres doctrine involves the distribution of charitable trust property in a manner "as close as possible" to that as the Settlor of the trust wanted. In applying the Cy Pres doctrine a Missouri court will determine two things, first what the specific intent of the settlor as described by the charitable trust instrument was and more generally, what his general interest behind the creation of the charitable trust was. If the court determines that the Settlor of the charitable trust (Alvin) only wanted the trust principal distributed to BCLK if it was a law school then they will not use the Cy Pres doctrine and the trust will become a resulting trust for Alvins residuary legatees or intestate heirs. However (as courts interpreting charitable trusts often do) if the court determines that the settlor (Alvin) had a general charitable intent to help disadvantaged law students and this is broad enough to include paralegal students, then the court will invoke Cy Pres and will award the trust principal to the Board of Regents of BCPK. Given the preference that courts have for finding that Cy Pres is applicable and charitable trusts should continue or for the benefit of a reasonably large unidentified number of the community at large I think that a court would probably award the trust principal to BCPK before making it a resulting trust for Alvin's legatees or heirs.

Case law on the Cy Pres doctrine has seen it appropriate to use this doctrine when the discovery of the cure to a disease in which the trust was donating to research was on was found. After the cure for Polio was found courts decided that the charitable trust had a general charitable intent to help cure disease and thus continued on with other non-polio research beneficiaries.

Alvin Alumni's trust in this case seems like less of a stretch than that existing case law. Alvin simply wanted to provide for economically disadvantaged students who were studying the law at his alma mater. The facts do not indicate any desire to not help such people if they are studying to be paralegals instead of lawyers. Thus in the facts as preferred, I believe that a court will use the Cy Pres doctrine and determine that the Board of Regents of BCPK can use the trust principal to create a scholarship for economically disadvantaged paralegal students. If the court decided not to invoke Cy Pres, then the express charitable trust would fail, it would become a resulting trust and be distributed to Alvin's residuary legatees (under his will) or to his intestate heirs.

2. Under Missouri trust law a trust will only be terminated if a court determines that all adult beneficiaries consent to the early termination and that such termination will not disadvantage any unborn, unascertained, unknown beneficiaries that the court should protect. Unlike some states Missouri is less concerned with whether the purpose of the trust has been met. However, even under this somewhat more liberal rule a court will usually not terminate a trust early if so doing will be to the detriment of unborn, unascertained, etc. beneficiaries. Courts deciding trust issues like this appoint a guardian ad litem to protect these unknown beneficiaries interests.

In our case, one settlor Lori is dead. Tabitha and Tom the first of the residuary beneficiaries want the trust terminated. The trust however was created for their support and for their issue to be distributed to the issue upon the death of Tabitha and Tom. The dispositive terms of a support trust will usually not be adjusted by a court (and need not be done by the trustee) as long as the

trustee is providing support in good faith and with proper motives.

Although Tom and Tabitha's income from the trust may have decreased, to terminate the trust early and sell off the principal would operate to the detriment of the unborn, unascertained beneficiaries of the trust (Tom and Tabitha's "issue" which will get the trust principal in equal shares upon their death). Thus I believe that the Guardian Ad Litem arguing on behalf of the unborn & unascertained issue of Tom & Tabitha (as well as their existing issue) will convince the court to not terminate the trust early. The most Tom & Tabitha could hope for would be an invasion of the principal to meet their support needs (but again since the other beneficiaries would suffer from this) it

7/02 Exam - MO Essay 4 - Sample Answer #3

Q1. BCPK is probably not entitled to the trust principle. At issue here is whether the doctrine of cy pres can be employed to prevent the failure of a charitable trust. The portion of Alvin's trust that provides that the principal should be distributed at his last child's death is a "charitable" trust because its purpose is to further education (law school) and a sufficiently large class of persons (economically disadvantaged law students) are the intended beneficiaries. According to the doctrine of "cy pres" if a charitable trust will fail for some reason, such as accomplishment of its purpose or lack of beneficiaries, the court has the discretion to apply the trust to a similar charitable purpose if it appears that the settlor has a general charitable intent in making the gift. If the court finds that the settlor only wanted the trust to succeed if it could accomplish the specific goal set forth in the instrument, cy pres will not be available and the trust will fail. In this case, it appears that Alvin had a very specific purpose for establishing the memorial fund–he wanted to benefit law students at his alma mater. The fact that Alvin was a graduate of BCLK and an attorney (not a paralegal) shows that he intended to benefit disadvantaged students of BCLK only. A school that provides training for paralegals is fundamentally different from a school that confers law degrees, and Alvin's charitable trust should therefore fail because the doctrine of cy pres cannot be used to allow BCPK to take the principal upon the death of Alvin's last surviving child. The investment accounts should go to Alvin's heirs. His children had only a life estate in the principal from the trust, and because the remainder of the principal cannot be distributed to an alternate charity under cy pres, the trust fails and reverts back to Alvin's estate.

Q2. The trust may or may not be terminated as Tabitha and Tom desire. In Missouri, a trust may be terminated if all adult beneficiaries consent to termination, and the court finds that termination is not detrimental to the interests of any unborn, disabled, minor, or unascertained beneficiaries. Missouri law does not require that termination not frustrate a material purpose of the trust settlor. In this case, however, termination of the trust would probably further the intent of the settlor, as the annual income generated is no longer meet Tom and Tabitha's financial needs. Lori's express purpose was to provide for the support, maintenance, and financial needs of Lori, Tom, & Tabitha, and the siblings therefore have sufficient grounds to seek termination. The trust can be terminated in a court proceeding if all 3 adult beneficiaries (Tom, Tabitha, and Tabitha's 23-year-old daughter) consent, and if the court finds that termination will not be detrimental to Tom's 3-year-old child and any other unborn "issue" (lineal descendants of Tom and Tabitha). The court will appoint a guardian ad litem to represent the interests of Tom's child and any unborn issue, and if the guardian consents, termination will be granted. Here, the guardian may be unlikely to consent, because at the death of Tom and Tabitha, the farmland will go to their "issue," "free of trust." Although the farmland is currently unproductive, this is not likely to be the case forever, and the minor and unborn beneficiaries' interests would be harmed if